Supreme Court, U. S.
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IN THE SUPREME COURT

OF THE UNITED STATES

_____TERM_____

NO. 78-832

WILLIAM LORAIN EVANS III, PETITIONER

V.

UNITED STATES OF AMERICA, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT AND REQUEST FOR SUMMARY REVERSAL

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PETITION FOR WRIT OF CERTIORARI
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AND REQUEST FOR SUMMARY REVERSAL

Petitioner, William Lorain Evans III, moves that a Writ of Certiorari issue and requests Summary Reversal of the Judgement of the United States Court of Appeals for the Fifth Circuit rendered in these proceedings on July 27, 1978.

OPINION BELOW

The opinion of the U. S. Court of Appeals for the Fifth Circuit is unreported

and appears at Apendix A hereto. No opinion was rendered by the U. S. District Court for the Northern District of Texas, Ft. Worth Division.

JURISDICTION

The judgement of the U. S. Court of Appeals for the Fifth Circuit was entered on June 13, 1978. A timely petition for rehearing was denied on July 27, 1978. This Petition for Certiorari was filed within thirty days of that date. This Court's jurisdiction is invoked under 28 USC 1254(1).

QUESTIONS PRESENTED FOR REVIEW

1. Whether a charge of falsifying a government document can be sustained when no such document nor authorized substitute was ever entered in evidence?

2. Whether a charge of "false and fraudulent" can be sustained when no evidence of damage to the Plaintiff was offered and no showing was ever made that Defendant owed any income taxes for 1976?

3. Whether the statuatory element of "willful" in 26 USC 7205 mandated that the prosecution prove beyond a reasonable doubt that Defendant knew prior to his acting that information given was false and fraudulent?

4. Whether a good faith constitutional challenge of a federal statute can be ignored by the Court of Appeals?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitution of the United States, Amendment 5:

"No person shall..be deprived of life, liberty, or property, without due process of law..."

Constitution of the United States, Amendment 10:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

5 USC 552A (e) (3):

"Inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual--

(A) the authority...

(B) the principal purpose...

(C) the routine uses...

(D) the effects on him, if any of not providing all or any part of the requested information;"

26 USC 7205:

"Any individual required to supply information to his employer under Section 3402 who willfully supplies false or fraudulent information..."

STATEMENT OF FACTS

William Lorain Evans III, was indicted on Feb. 16, 1977, on one count of supplying false and fraudulent information by claiming 99 exemptions on U.S. Government "Form W-4" in 1976 in violation of 26 USC 7205. This

is not a tax evasion case. There was no evidence that any income taxes were owed the government by Evans in 1976. There was no evidence that Evans willfully supplied any false or fraudulent information. The "Form W-4" Evans was charged with filing does not exist nor does any authorized substitute. Evans was actually prosecuted on a Bell Helicopter Co. (his employer) computer form card and on a Bell Helicopter Co. computing symbol.

Evans proceeded pro se after his motion for counsel of choice was repeatedly denied by the trial Court and after he had tried to engage a lawyer acceptable to both himself and the Court but was not successful. He was further denied his choice of assistance of counsel during the trial after he was forced to proceed pro se.

No evidence was entered to show that Evans had any income tax liability for the year in question, 1976.

Mr. Kayo Rankin, head of the payroll department at Bell Helicopter Co., testified repeatedly during the trial that the form which Evans had signed was a Bel Helicopter Co. computing form printed for Bell use only. He stated that no government Form W-4's or W-4E's were ever used by Bell. He further testified that the number "99" found at the bottom of the Bell form signed by Evans was a Bell Helicopter Co. computing symbol meaning "exempt" (Govt. Ex. 5). He stated that this symbol was known and understood by the payroll department to mean exempt and was not understood to mean a claim for 99 exemptions.

REASONS FOR GRANTING THE WRIT

1. The government was required to enter into evidence that government "Form W-4" charged in the indictment or an authorized substitute with the claimed fraudulent information thereon. Govt. Ex. 5 is neither.

Title 5 USC 552A requires certain pri-

vacy disclosure information be supplied with any government form that requests information from a citizen. This information must be on the form or on a separate form supplied with the first form. The fact that this information is contained on both the government Form W-4 and Form W-4E for 1976 is proof that the Internal Revenue Service recognizes that it must comply with the law in regard to its forms. No such disclosure information exists on the Bell Helicopter Co. form (Govt. Ex. 5). Mr. Rankin testified that no such information was supplied either verbally or written with the Bell form when it is given to an employee.

Since no government withholding form or authorized substitute exists in evidence, the Bell Helicopter withholding and information thereon must be construed only in light of Bell Helicopter payroll procedures.

As noted in the Statement of Facts

the number "99" as used by Bell's payroll department is a computer symbol meaning "exempt". Since the government offered no evidence to show a tax liability for Evans for 1976, it did not disprove his claim of exempt status for 1976. The charge of false and fraudulent cannot be sustained.

There are two fatal variances between the indictment and the evidence at trial. There was no Form W-4 or authorized substitute offered in evidence. The number "99" was a computer symbol and not a claim for 99 exemptions as charged.

Section 3402(f) (5)-1 of 26 USC allows an employer to substitute a form "...the provisions of which are identical with those of the prescribed form." The trial Court committed reversable error when it instructed the jury that the provisions of the Bell Helicopter form and the government Form W-4 were substantially the same. Since the term "substantially the same" does not mean the

same as "identical", the trial judge in effect changed the meaning of the law for the jury.

2. The Government must prove beyond reasonable doubt intent to deceive or mislead with resulting damage to the government to sustain a charge of "false and fraudulent". In reRosenfeld,C.C.A.N.Y. 262 F 876-879; U.S. v Snider,502 F2d 645,650,651 (4 Cir. 1974); Heindel v U.S., 150 F.2d 493 (6 Cir. 1945); U.S. v Lange, 528 F2d 1282 (1976).

The evidence at trial showed that both Defendant and Bell Helicopter payroll department understood that the number 99 on the Bell form (Govt. Ex.5) was a claim of exempt status and not a claim of 99 exemptions. The government did not show evidence of tax liability for 1976 nor show any damage to the government. No deception or intent to deceive was shown. There is, therefore, no proof beyond a reasonable doubt that the information was

"false and fraudulent".

The trial judge committed reversable error when he gave to the jury an improper definition of "false" after Defendant required the Court to take judicial notice under Rule 201 of F.R.C.P. of the long accepted definition of the term.

3. The prosecution must prove that Evans had prior knowledge that the information supplied was false to sustain the charge of willful. The term "willful" in a criminal statute always embodies bad purpose or evil motive and requires prior knowledge. Wilson v U.S.,C.C.A. Cal. 156 F.2d 433,435; Bowles v Jung, D.C. Cal., 57 F. Supp. 701,709; U.S. v Palermo, C.A. Pa., 259 F.2d 372,881,882.

The only purpose testified to at trial for the computer symbol "99" was to stop withholding. The government did not show beyond a reasonable doubt that Defendant was not entitled to stop the with-

holding for 1976. The Government did not show that Defendant owed any income taxes for 1976. Therefore, no bad purpose or evil motive was shown beyond a reasonable doubt.

4. The Fifth Circuit Court of Appeals must give a ruling in law to a good faith constitutional challenge of a federal statute. The Circuit Court denied Evans due process of law when it called his challenges frivolous without supporting such a charge with law. This they did not do. Defendant cited numerous court cases including U.S. Supreme Court decisions to support his challenges. He also included extensive definition of terms. No flaw was noted by the Court in Defendant's arguments. The only case cited by the Court did not address either challenge (McMullen v U.S., W.D.Tenn., 1977 A.F.T.R.2d 77-628). The Court must show in law where the challenges are in error or it deprives Defendant of due process.

CONCLUSION

The judgement below conflicts in principle with numerous holdings of this Court and is an abrupt departure from Due Process of Law established by the Constitution and carried by this Court for 200 years. Therefore this Petition for a Writ of Certiorari should be granted and Summary Reversal should be entered.

In the event that this Petition is not granted, Defendant moves this Court to stay the Mandate pending a review by this Court of an Appeal of at least eight issues timely submitted to the Court.

Respectfully submitted,

William Lorain Evans III, Pro se

CERTIFICATE OF SERVICE

This is to certify that three copies of the foregoing Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit and Request for Summa-

ry Reversal have been mailed on Oct. 5, 1978 to Mr. R. H. Wallace, Jr., Assistant U. S. Attorney, U. S. Court House, 10th and Lamar Streets, Fort Worth, Texas, 76102, and that one copy has been mailed on the same date to the Solicitor General, Department of Justice, Washington, D.C., 20530.

William Lorain Evans III

Two additional copies have been mailed to the Solicitor General, Department of Justice, Washington, D.C. 20530 on Nov. , 1978.

William Lorain Evans III

APPENDIX A, OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, DATED JUNE 13, 1978,

UNITED STATES OF AMERICA,
PLAINTIFF-APPELLEE,

V.

WILLIAM LORAIN EVANS, III,
DEFENDANT-APPELLANT.

No. 77-5342
SUMMARY CALENDAR.*

JUNE 13, 1978

DEFENDANT WAS CONVICTED BEFORE THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, ELDON B. MAHON, J., OF SUPPLYING A FALSE AND FRAUDULENT STATEMENT ON AN INTERNAL REVENUE SERVICE FORM W-4 SUBMITTED TO HIS EMPLOYER, AND HE APPEALED. THE COURT OF APPEALS HELD THAT: (1) CONTENTIONS THAT THE CONSTITUTION DOES NOT AUTHORIZE CONGRESS TO ENACT CRIMINAL PENALTIES ON TAXATION MATTERS AND THAT WITHHOLDING SYSTEM FOR TAXES IS PROHIBITED BY THE BILL OF ATTAINDER CLAUSE WERE FRIVOLOUS, AND (2) DEFENDANT LACKED STANDING TO OBJECT THAT RECORDS SUBMITTED AT TRIAL WERE OBTAINED FROM HIS EMPLOYER UNDER AN ADMINISTRATIVE SUMMONS RATHER THAN BY SUBPOENA OR SEARCH WARRANT.

AFFIRMED.

1. INTERNAL REVENUE

CONVICTION OF SUPPLYING A FALSE AND FRAUDULENT STATEMENT ON AN INTERNAL REVENUE SERVICE FORM W-4 SUBMITTED TO DEFENDANT'S EMPLOYER WAS NOT REQUIRED TO BE REVERSED ON GROUND THAT PROOF SHOWED FALSIFICATION OF A FORM SUPPLIED BY THE EMPLOYER WHILE INDICTMENT CHARGED FALSIFICATION OF AN IRS FORM.

26 U.S.C.A. (I.R.C.1954) § 7205.

2. Constitutional Law

Internal Revenue

Contentions that the Constitution does not authorize Congress to enact criminal penalties on taxation matters and that withholding system for taxes was prohibited by Bill of Attainder clause of the Constitution were frivolous and did not require reversal of conviction of supplying a false and fraudulent statement on an Internal Revenue Service form W-4 submitted to the employer. 26 U.S.C.A. (I.R.C.1954) § 7205.

3. Internal Revenue

Defendant, charged with supplying a false and fraudulent statement on an Internal Revenue Service form W-4 submitted to his employer, lacked standing to object that records submitted on trial were obtained from his employer through an administrative summons rather than by subpoena or search warrant.
26 U.S.C.A. (I.R.C.1954) § 7205.

4. Criminal Law

Trial court's questioning of witnesses did not require reversal where such questioning was pertinent to material facts and was not prejudicial.

Appeal from the United States District Court for the Northern District of Texas.

Before Goldberg, Ainsworth and Hill, Circuit Judges.

PER CURIAM:

Defendant William Evans filed an "Employee's Withholding Exemption" certificate with his employer Bell Helicopter on May 27, 1976. On this certificate he claimed ninety-nine exemptions despite the fact that he claimed only four exemptions on his 1975 federal income tax return. Evans was subsequently indicted for supplying a false and fraudulent statement on an Internal Revenue Service Form W-4 submitted to his employer in violation of 26 U.S.C. § 7205. Evans was found guilty following a jury trial and he was sentenced to one year imprisonment. On this appeal Evans raises numerous objections to his conviction: 1) the proof at trial which showed the falsification of a form supplied by his employer varied from the indictment which charged falsification of an Internal Revenue Service Form W-4; 2) the evidence was insufficient to show that the form was falsely and fraudulently completed; 3) the evidence was insufficient to prove that any false statement was wilfully supplied; 4) the trial court denied Evans of his right to counsel of his choice at arraignment; 5) the trial court denied Evans his right to counsel of his choice at trial; 6) the Constitution does not authorize Congress to enact criminal penalties on taxation matters; 7) preassessment of taxes under the withholding system is an unconstitutional bill of attainder; and 8) the trial court committed reversible errors during the course of the trial.

1.2 This Court has recently considered other cases involving defendants who made false and fraudulent statements on tax withholding forms. The defendants in those cases raised as error contentions similar to contentions 1, 2, 3, 4, and 5 in this case. See United States v. Moore, 5 Cir., 1978, 569

F.2D 1312; UNITED STATES V. SPARLIN, 5 CIR., 1978, 569 F.2D 1314; UNITED STATES V. STEPHENS, 5 CIR., 1978, 569 F.2D 1372; UNITED STATES V. CARTER, 5 CIR., 1978, 568 F.2D 453; UNITED STATES V. ARLT, 5 CIR., 1978, 567 F.2D 1295. OUR ANALYSIS OF THE CIRCUMSTANCES IN THOSE DECISIONS EXPLAINS WHY EVANS' SIMILAR CONTENTIONS ARE WITHOUT MERIT. IN ADDITION, WE CONCLUDE THAT THE CONTENTIONS THAT THE CONSTITUTION DOES NOT AUTHORIZE CONGRESS TO ENACT CRIMINAL PENALTIES ON TAXATION MATTERS AND THAT THE WITHHOLDING SYSTEM FOR TAXES IS PROHIBITED BY THE BILL OF ATTAINDER CLAUSE OF THE CONSTITUTION ARE FRIVOLOUS. SEE MC MULLEN V. UNITED STATES, W.D. TENN., 1977, 39 A.F.T.R.2D 77-628.

3,4 WE ALSO FIND THAT THE ALLEGED IRREGULARITIES AT THE DEFENDANT'S TRIAL ARE NOT GROUNDS FOR REVERSAL. EVANS LACKS STANDING TO OBJECT THAT RECORDS ADMITTED AT HIS TRIAL WERE OBTAINED FROM HIS EMPLOYER THROUGH AN ADMINISTRATIVE SUMMONS RATHER THAN BY SUBPOENA OR SEARCH WARRANT. SEE FISHER V. UNITES STATES, 425 U.S. 391, 96 S.CT. 1569, 48 L.ED2D 39 (1976). THE JURY INSTRUCTIONS GIVEN BY THE TRIAL JUDGE ADEQUATELY STATED THE LAW RELEVANT TO THE DEFENDANT'S CASE, SEE, E.G., UNITED STATES V. MARCHESE, 2 CIR., 1971, 438 F.2D 452; PINE V. UNITED STATES, 5 CIR., 1943, 135 F.2D 353, CERT. DENIED, 320 U.S. 740, 64 S.CT. 40, 88 L.ED. 439 (1943). THE QUESTIONING OF WITNESSES BY THE TRIAL COURT WAS PERTINENT TO MATERIAL FACTS AND WAS NOT PREJUDICIAL TO THE DEFENDANT. SEE UNITED STATES V. DELAUGHTER, 5 CIR., 1972, 453 F.2D 908, CERT. DENIED, 406 U.S. 932, 92 S.CT. 1769, 32 L.ED.2D 135 (1972). FINALLY, THE COMMENTS OF THE COURT AND THE PROSECUTOR DID NOT CONSTITUTE PREJUDICE REQUIRING REVERSAL.

AFFIRMED.

* RULE 18, 5 CIR.; SEE ISBELL ENTERPRISES, INC. V. CITIZENS CASUALTY CO. OF NEW YORK ET AL., 5 CIR. 1970, 431 F.2D 409, PART I.